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Bowen Trucking, Inc., Dalbo, Inc., Northwest Carriers, Inc., Philip W. Martin And D.E. Casada Construction v. Public Service Commission of Utah Frank S. Warner, Olof E. Zundel, And James N. Kimball, Commissioners of The] Public Service Commission of Utah, And Duane Hall Trucking, Inc : Brief of Respondents Public Service Commission of Utah, Frank S. Warner, Olof E. Zundel, And James N. Kimball, Commissioners.

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BEN E. RAWLINGS and C. REED BROWN; Attorneys for Defendant-Respondent Duane Hall Trucking
William s. Richards D. Michael Jorgensen; Attorneys for Plaintiffs

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IN THE SUPREME COURT OF THE STATE OF UTAH

BOWEN TRUCKING, INC., :
DALBO, INC., NORTHWEST :
CARRIERS, INC., PHILIP W. :
MARTIN and D. E. CASADA :
CONSTRUCTION, :

Plaintiffs- : Case No. 143
Appellants, :

-vs-

FRANK S. WARNER, OLOF E.
ZUNDEL, and JAMES M.
KIMBALL, Commissioners
of the Public Service
Commission of Utah,

Defendants-
Respondents.

BRIEF OF RESPONSE
COMMISSIONERS

William S. Richards
D. Michael Jorgensen
NELSON, HARDING, RICHARDS
LEONARD & TATE
Attorneys for Appellants
1515 Walker Bank Building
Salt Lake City, Utah 84119

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IN THE SUPREME COURT OF THE STATE OF UTAH

BOWEN TRUCKING, INC., DALBO, :
INC., NORTHWEST CARRIERS, INC., :
PHILIP W. MARTIN and D. E. :
CASADA CONSTRUCTION, :
:
Plaintiffs- :
Appellants, : Case No. 14533

-vs- :

PUBLIC SERVICE COMMISSION :
OF UTAH, FRANK S. WARNER, :
OLOF E. ZUNDEL, and JAMES :
N. KIMBALL, Commissioners :
of the Public Service :
Commission of Utah, and :
DUANE HALL TRUCKING, INC., :

Defendants- :
Respondents. :

BRIEF OF RESPONDENTS PUBLIC SERVICE COMMISSION
OF UTAH, FRANK S. WARNER, OLOF E. ZUNDEL, AND
JAMES N. KIMBALL, COMMISSIONERS.

STATEMENT OF THE KIND OF CASE

Public Service Commission, Frank S. Warner,
Olof E, Zundel, and James N. Kimball, adopt the Statement
of the Case set forth in the brief of respondent Duane
Hall Trucking, Inc.

RELIEF SOUGHT ON APPEAL

Respondents seek to have the Report and Order
of March 3, 1976, affirmed.

STATEMENT OF FACTS

Respondents Public Service Commission of Utah,
Frank S. Warner, Olof E. Zundel and James N. Kimball,

Commissioners, adopt the Statement of Facts set forth in the brief of respondent Duane Hall Trucking, Inc.

I.

THE PUBLIC SERVICE COMMISSION OBTAINED JURISDICTION TO REHEAR THE CASE FROM RULE 60(b) (7) OF THE UTAH RULES OF CIVIL PROCEDURE.

In general, once a court has rendered its decision, that decision becomes binding and final unless a timely appeal has been made. However, the legislature realized that occasionally final judgments would produce harsh and undesirable results. Hence, to alleviate possible inequities that might occur, Rule 60 of the Utah Rules of Civil Procedure was enacted. Rule 60(b), U.R.C.P. provides:

"(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4(e) and the defendant has failed to appear in said action; (5) the judgment is void; (6) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have

prospective application; or (7) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action." (Emphasis added.)

This rule allows a judicial body to set aside a final judgment in order to achieve justice. The problem lies in the fact that the court must decide between two valid considerations. On the one hand, there must be an end to litigation. Once a decision has been made, interested parties should be able to rely on that decision. On the other hand, the court attempts to see that justice is promoted; that a party receives its fair day in court. Obviously, its a matter of discretion. The court must look at the totality of the circumstances and then render what it considers to be a just and fair decision.

Prior to the time that the Commission granted the rehearing, it felt that the applicant had presented sufficient evidence to warrant a new hearing but felt bound by what it thought was the law. Quoting from the Public Service Commission's Order dated August 1, 1975, wherein it states:

"The commission is of the opinion that sufficient reason for rehearing has been made to appear. However, Section 54-7-15, U.C.A. (1953) provides that applications for rehearing must be made prior to the effective date of the order or decision or within twenty days thereafter. The application in the present case was not within said time." (R. 154) (Emphasis added).

Based on Section 54-7-15 of the Code and the fact that the Public Service Commission was under the mistaken impression of just what an applicant had to prove in order to transfer a number of contracts under the same permit, the Commission denied defendant's request for a rehearing. Then, in August 1975, the Utah Supreme Court handed down the Pickering decision (Murphy v. Public Service Commission of Utah, 539 P.2d 367 (1975)), which held that it was unnecessary to prove each and every contract in order to obtain a permit.

Using Rule 60(b)(7) and the Pickering decision, as its basis, defendant Duane Hall again filed for a rehearing.

The motion was made within a reasonable time; within six (6) months of the Commission's original order. See Ney v. Harrison, 5 Utah 2d 217, 299 P.2d 1114 (1956) involving an eleven (11) month period between the time a default judgment was rendered and a petition under Rule 60(b)(7) was filed. The Commission found that the defendant had presented reasonable grounds and that the motion must be granted to avoid inequity (R. 184).

Equity is of principal concern in granting relief under Rule 60(b). Ney v. Harrison, (supra), is of significance in examining the role of equity in Rule 60(b) cases. In Ney v. Harrison, (supra), as in this case mistake was a basis for invoking relief under Rule 60(b). The defendant in Ney had mistakenly believed that she was fully protected by an earlier divorce decree. The plaintiff argued that the type of mistake was a mistake of law not covered by Rule 60(b). Plaintiff further pointed out that under the common law all judgments were final and that statutes in derogation of common law must be strictly construed. This court declared that such a rule has no application in the State of Utah and that the rules of equity should be followed.

Our Civil Code expressly provides:

"The rule of the common law that statutes are to be strictly construed has not application to the statutes of this state. The statutes establish the laws of this state respecting the subjects' to which they relate, and their provisions and all proceedings under them are to be liberally construed with a view to effect the objects of the statutes and to promote justice. Whenever there is any variance between the rules of equity and the rules of common law in reference to the same matter the rules of equity shall prevail. (At page 1116) (Emphasis added.)

Equity demanded that the Public Service Commission reopen the case in light of: (1) the defendant, Duane Hall, paid almost forty times more than what his original permit was worth; (2) the defendant sought the counsel and advice of several attorneys; (3) he contacted the Public Service Commission in an attempt to straighten the matter out; and (4) the Commission had based its earlier decision on an erroneous assumption.

This court stated in Warren v. Dixon Ranch Co., 123 Utah 416, 260 P.2d 741, 742 (1953) that:

"Equity considers factors which may be irrelevant in actions at law, such as the unfairness of a party's conduct, his delay in bringing or continuing the action, the hardship in granting or denying relief. Although an equity court no longer has

complete discretion in granting or denying relief it may exercise wide judicial discretion in weighing the factors of fairness and public convenience, and this court on appeal will reverse the trial court only where an abuse of this discretion is clearly shown." (Emphasis added.)

The application of Rule 60(b) was also considered in Dixon v. Dixon, 121 Utah 259, 240 P.2d 1211 (1952). There the court stated that the signing and entering of a formal order based upon the erroneous assumption that it conformed to a direction of the court was sufficient grounds to invoke Rule 60(b)(7). The court said that to have done otherwise would have worked a grave injustice upon the party seeking relief. "Furthermore, in absence of a rule to that effect [Rule 60(b)(7)], the court, perhaps, had inherent power to set the formal order aside anyway." (At page 1214)

The situation in the Dixon case is analogous to the present one in that the Public Service Commission based its order upon an erroneous assumption thinking it had complied with the wishes of the court. However, when the defendant filed its Motion for Rehearing, the Commission realized that it had not and granted a rehearing finding that sufficient reasons had been presented to justify a modification of its former order.

II.

THE PUBLIC SERVICE COMMISSION HAS BROAD DISCRETION IN MAKING ITS DETERMINATIONS AND THESE DETERMINATIONS ARE PRESUMED VALID BY THIS COURT.

The Public Service Commission was established as an administrative body to regulate public utilities. Because of its continuous dealings in this field, it is assumed that the Public Service Commission has acquired a special expertise in handling problems that arise within the area of public utilities. This fact has been recognized by the courts as witnessed by a statement in Armored Motors Service v. Public Service Commission, 23 Utah 2d 418, 464 P.2d 582 (1970), wherein the court declared:

" . . . It must also be realized that the legislature has given the commission the responsibility for the overall planning and regulation of certain public services, including transportation. Because that is the purpose for which the commission was established and functions, it is assumed to have specialized knowledge and expertise in the field. Consequently it is accorded comparatively broad prerogatives in carrying on investigations and making determinations in the discharge of its duties. For these reasons its findings and orders are endowed with the presumption of verity; and upon appeal to

this court we assume that the commission believed those aspects of the evidence which support its findings and we review the record in the light most favorable to them.
(At page 584) (Emphasis added.)

Utah Gas Service v. Mountain Fuel Supply Co., 18

Utah 2d 310, 422 P.2d 530 (1967), wherein this court stated:

"When the commission, in performing its duties has given consideration to pertinent facts and has made its findings and decision, they are endowed with a presumption of validity and correctness. In accordance with the recognized prerogatives of the trier of the facts, on appeal the evidence is viewed in the light most favorable to sustaining them; and the decision will not be reversed unless when the evidence is so viewed, there is no reasonable basis to support the commission's action, so that it thus appears to be capricious and arbitrary, a situation which is not shown to exist here." (At page 533) (Emphasis added.)

Hence, a ruling or an order issued by the Public Service Commission is presumed valid because of that body's unique position. As an administrative body, the Public Service Commission is able to draw upon years of experience and expertise in weighing the facts as they are presented. Its decision to reopen

is endowed with a presumption of validity and should not be reversed.

III.

THE RULING OF THE PUBLIC SERVICE
COMMISSION GRANTING THE MOTION TO REOPEN
IS PRESUMED CORRECT AND CAN ONLY BE
OVERTURNED IF SHOWN TO BE ARBITRARY
OR CAPRICIOUS, WHICH SHOWING APPELLANTS
HAVE FAILED TO MAKE.

When the Public Service Commission issues an order or a ruling, and a party seeks review, this court may only reverse the Commission's decision if the appellant can show that the Commission abused its discretion. "Abuse of discretion" has been defined by this court to be:

"By an abuse of discretion,
* * * is meant a clearly erroneous
conclusion and judgment--one that
is clearly against the logic and
effect of such facts as are presented
in support of the application, or
against the reasonable and probable
deductions to be drawn from the facts
disclosed upon the hearing."
State v. Draper, 83 Utah 115, 27 P.2d
39, 49, 50 (1933).

This definition has been adopted by the Oregon Supreme Court in the case of Port of Umatilla v. Richmond, 212 Ore 596, 321 P.2d 338 (1958). Also see Robinson v. Olzendam, 38 Wash.2d 30, 227 P.2d 732 (1951).

As examination of the record clearly shows that the Commission did not abuse discretion. Before granting the motion for rehearing the Commission examined extensive supporting and opposing memorandum. The Commission also made an exhaustive examination of the record of the proceedings and the decision of this honorable court in Murphy v. Public Service Commission of Utah, supra. After these involved deliberations the Commission made its finding that equity required the granting of the motion to reopen.

In an action such as this one, the burden of proof is on the appellants to show that an abuse of discretion occurred. In Lewis v. Wycoff, 18 Utah 2d 255, 420 P.2d 264 (1966), this court stated:

"Due to the responsibility imposed upon the commission, and its presumed knowledge and expertise in this field, its findings and order are supported by certain well-recognized rules of review: They are endowed with a presumption of validity and correctness; and the burden is upon the plaintiff to show that they are in error. We survey the evidence in the light most favorable to sustaining them;

and we will not reverse unless there is no reasonable basis therein to support them so that it appears that the commission's action was capricious and arbitrary."
(At page 266) (Emphasis added.)

Several years earlier the court in Hotel Utah Co. v. Industrial Commission, 116 Utah 443, 211 P.2d 200 (1949), declared:

"The authority to determine which type of unit is appropriate is vested in the board and not in this court. If the discretion so granted is reasonably exercised, the finding cannot be set aside. It is only in those cases wherein we can find the board has abused its discretion that we may interfere. And if appellant seeks to reverse the finding of the board because of an abuse of discretion in selecting the appropriate unit the burden is on it to establish the abuse."
(At page 203) (Emphasis added.)

Not one scintilla of fact or evidence points to arbitrary or capricious action on the part of the commission. Based on the totality of the circumstances, the Commission did not abuse discretion, and its decision should stand. Appellants have failed to meet their burden and the action of the Commission should be sustained. Appellants have failed to show that the Commission abused discretion and the action of the Commission must be affirmed.

CONCLUSION

The Public Service Commission had jurisdiction to rehear the case under Rule 60(b)(7) of the U.R.C.P. No one was in a better position than the Public Service Commission to make a decision in the present case. Using its expertise in this field and its special knowledge of the facts of the case, the Commission issued a well-reasoned order; designed to eliminate the inequities that had resulted from its previous decision. Because of its unique position as the trier of fact, its decision is presumed to be valid. A party questioning the validity of the order assumes the burden of showing that it is in fact arbitrary and unreasonable. This the appellants have failed to do. Therefore the Public Service Commission respectfully requests the Court to affirm its order and judgment.

Respectfully submitted,

VERNON B. ROMNEY
Attorney General

BRINTON R. BURBIDGE
Assistant Attorney General

Attorneys for Respondents